



40 CFR Part 52

[EPA-R03-OAR-2022-0284; FRL-9698-02-R3]

Approval and Promulgation of Air Quality Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Hydro Carbide Tool Company's Case-by-Case Sources under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for sources at Hydro Carbide Tool Company (Hydro Carbide), a major source of volatile organic compounds (VOC), pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rule action, EPA is approving source-specific RACT determinations (also referred to as case-by-case or CbC) submitted by PADEP for certain VOC sources at Hydro Carbide, a facility in Westmoreland County. The RACT evaluation was submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving this revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0284. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g.,

confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. **FOR FURTHER INFORMATION CONTACT:** Mr. Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2217. Mr. Burger can also be reached via electronic mail at burger.riley@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 6, 2022, EPA published a notice of proposed rulemaking (NPRM). 87 FR 19824. In the NPRM, EPA proposed approval of case-by-case VOC RACT determinations for emission units at Hydro Carbide,¹ as EPA found that the RACT controls for these sources met the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS. The case-by-case RACT determinations for sources at these facilities were included in PADEP's May 7, 2020 SIP submission.

As more fully explained in the NPRM, under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of nitrogen oxides (NO_x) and VOC and any source covered by control technique guidelines (CTG), for each ozone NAAQS. Which NO_x and VOC sources in Pennsylvania are considered "major," and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. NO_x sources in Pennsylvania located in any ozone attainment areas or in any nonattainment areas designated moderate or below are subject to a major source threshold of 100 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section

¹ Within the material submitted by PADEP, this company is sometimes referred to as Hydro Carbide Inc.

182(f)(1). See definition of “Major NO_x emitting facility” at 25 Pennsylvania Code 121.1 and 40 CFR 52.2020(c)(1). Similarly, VOC sources located in any ozone attainment areas or in any nonattainment areas designated serious or below are subject to a major source threshold of 50 tpy because of the OTR requirements in CAA section 184(b)(2). See definition of “Major VOC emitting facility” at 25 Pa. Code 121.1 and 40 CFR 52.2020(c)(1).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP’s May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO_x RACT requirements for both standards. The SIP revision requested approval of Pennsylvania’s 25 Pa. Code 129.96-100, *Additional RACT Requirements for Major Sources of NO_x and VOCs* (the “presumptive” RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_x and VOC control measures in 25 Pa. Code 129.92-95, *Stationary Sources of NO_x and VOCs*, (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_x sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania’s SIP and continue to be implemented as RACT.² On September 26, 2017, PADEP submitted a supplemental SIP revision including a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP’s original May 16, 2016 “presumptive” RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.³ 84 FR 20274. In EPA’s final

² The EPA granted conditional limited approval of Pennsylvania’s case-by-case RACT I rule on March 23, 1998 pending Pennsylvania’s submission of and EPA’s determination on proposals for facilities subject to case-by-case (source-specific) RACT requirements. 63 FR 13789. On May 3, 2001, EPA removed the conditional status of its 1998 approval once the state certified that it had submitted case-by-case RACT I proposals for sources subject to the RACT requirements but retained the limited nature of the approval. 66 FR 22123. EPA granted full approval on October 22, 2008 once it approved all case-by-case RACT I proposals submitted by Pennsylvania. 73 FR 62891. Through this RACT II rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this final rule.

³ On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA’s approval of three provisions of Pennsylvania’s presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020). None of the sources in this final rule are subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

conditional approval, EPA established conditions requiring PADEP submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_x emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval (*i.e.*, by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP submitted to EPA for approval the various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_x and VOC emissions limits. This rule takes final action on a SIP revision for VOC sources at Hydro Carbide, based on EPA's review.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revisions

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_x and VOC emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. PADEP's submission included a SIP revision pertaining to case-by-case RACT determinations for the existing VOC emissions units at Hydro Carbide that required a case-by-case RACT determination.⁴

In the case-by-case RACT determinations submitted by PADEP, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emissions limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the RACT II presumptive or case-by-case requirements new to the SIP. If more stringent, the RACT I requirements would continue to apply to the applicable source. If case-by-case RACT II requirements that are new to the SIP are more stringent than the RACT I

⁴ Hydro Carbide, which currently operates under the major source threshold via a facility-wide VOC cap, is subject to 25 Pa. Code 129.99 under the applicability provisions of 25 Pa. Code 129.96, as the facility was a major source in existence on or before July 20, 2012.

requirements, then the RACT II requirements would supersede the prior RACT I requirements.⁵

Here, EPA is approving SIP revisions pertaining to case-by-case RACT requirements for certain VOC sources at Hydro Carbide. Hydro Carbide is a major source of VOCs and was subject to RACT I under the name Fansteel Hydro Carbide. The case-by-case RACT determinations submitted by PADEP, consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of additional emissions limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in a revised federally enforceable permit (hereafter RACT II permit) issued by PADEP to Hydro Carbide. The RACT II permit was submitted as part of the Pennsylvania RACT SIP revision for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permit being approved in this action for Hydro Carbide (formerly Fansteel Hydro Carbide) is permit number 65-00860, effective November 15, 2019, and is part of the docket for this rulemaking, which is available online at www.regulations.gov, Docket No. EPA-R03-OAR-2022-0284.⁶ For certain VOC sources at Hydro Carbide, EPA is incorporating by reference in the Pennsylvania SIP the source-specific emissions limits and control measures in the RACT II permit, and is determining that these provisions satisfy the RACT requirement under the 1997 and 2008 8-hour ozone NAAQS.

B. EPA's Final Action

This CbC RACT SIP revision incorporates determinations by PADEP of source-specific RACT II controls for individual VOC emission units at Hydro Carbide, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation. After thorough review and evaluation of the information submitted to EPA by PADEP, in its SIP revision

⁵ Hydro Carbide's prior SIP-approved RACT I permit will remain part of the SIP, and this RACT II rule will incorporate by reference the additional RACT II requirements through the RACT II permit.

⁶ The RACT II permit included in the docket for this rule is a redacted version of the facilities' federally enforceable permit. It reflects the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

submittals for sources at Hydro Carbide, EPA found that: 1) PADEP's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; and 2) PADEP's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

EPA proposed to find that all the proposed revisions for Hydro Carbide would result in equivalent or additional reductions of VOC emissions. Consistent with section 110(l) of the CAA the proposed revisions will not result in additional VOC emissions and thus should not interfere with any applicable requirement concerning attainment.

Other specific requirements of the 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and the rationale for EPA's proposed action are explained more thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments

EPA received two sets of comments on the April 6, 2022 NPRM. 87 FR 19824. One set of comments expresses support for this SIP revision, and thus no response is necessary. The second set of comments raises general policy considerations not directly relevant to the SIP revision, does not identify any defects, and does not raise any issues concerning the SIP revision's consistency with the CAA with sufficient specificity to determine its relevance to this action. Thus, no response is necessary. A copy of the comments can be found in the docket for this rule action.

IV. Final Action

EPA is approving case-by-case RACT determinations for certain VOC sources at Hydro Carbide, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain VOC emission sources at one facility in Pennsylvania, as discussed in Section II. of this preamble. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁷

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

⁷ 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular

applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's VOC RACT requirements for one facility for the 1997 and 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons set out in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. In § 52.2020, the table in paragraph (d)(1) is amended by:

- a. Revising the entry “Fansteel Hydro Carbide”; and
- b. Adding an entry at the end of the table for “Hydro Carbide Tool Company (formerly referenced as Fansteel Hydro Carbide)”.

The revision and addition read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) ***

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations /§§ 52.2063 and 52.2064 citations¹
* * *	* * *				
Fansteel Hydro Carbide	(OP)65-000-860	Westmoreland	12/12/97	10/17/01, 66 FR 52700	See also 52.2064(k)(1) .
* * *	* * *				
Hydro Carbide Tool Company (formerly referenced as Fansteel Hydro Carbide)	65-00860	Westmoreland	11/15/19	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] , [INSERT FEDERAL REGISTER CITATION]	52.2064(k)(1) .

¹ The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

3. Amend § 52.2064 by adding paragraph (k) to read as follows:

§ 52.2064 EPA-approved Source Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x).

* * * * *

(k) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for Hydro Carbide Tool Company is incorporated as specified. (Rulemaking Docket No. EPA-OAR-2022-0284.)

(1) Hydro Carbide Tool Company – Incorporating by reference Permit No. 65-00860, effective November 15, 2019, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP-65-000-860, effective December 12, 1997, remain as RACT requirements. See also §52.2063(c)(178)(i)(B)(7), for prior RACT approval.

(2) [Reserved]

[FR Doc. 2022-20107 Filed: 9/19/2022 8:45 am; Publication Date: 9/20/2022]